

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 48 of 2004

Mithun S/o Sri Mewa Lal,
R/o Jeet Pur Nagi, Rampur Road,
Near Dalakoti Mineral,
Haldwani, Nainital.

..... Appellant

Versus

1. M/s New India Assurance Co.,
through Divisional Manager,
Opp. Sessions Court, Haldwani.
Nainital.
2. Murtuza Hussain S/o Mustufa Hussain,
R/o Line No. 18, Azad Nagar,
Haldwani, Nainital

..... Respondents

Mr. Z.U. Siddiquie, Advocate for the appellant.
Mr. T.A. Khan, Advocate for respondent No. 1.

JUDGMENT

**Coram: Hon. Rajeev Gupta C. J.
Hon. M.M. Ghildiyal, J.**

RAJEEV GUPTA, C.J. (Oral)

Mr. Z.U. Siddiqui, Advocate for the appellant.

Mr. T.A. Khan, Advocate for respondent No. 1 M/s New India
Assurance Co. Ltd.

None for respondent No.2.

They are heard.

2. This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Haldwani, District Nainital vide Award dated 10.10.2003 passed in Motor Accident Claim Petition No. 12 of 2003.

3. Claimant Mithun claimed compensation of Rs. 6,00,000/- (Rupees Six Lakhs only) for the injuries sustained by him in the motor accident in the morning of 26.11.2002 when the Truck bearing registration No. UP20D 2647 dashed him resulting in multiple injuries to him. The claimants, further, pleaded that on account of the injuries sustained by him in the accident, he remained bed-ridden for a period

of about six months and could not attend to his duties resulting in monetary loss to him.

4. The owner and the insurer of the Truck contested the claim and denied their liability to pay compensation to the claimant. The insurer took the plea that the Truck was being plied in breach of the policy conditions and the driver of the Truck did not have any valid driving license.

5. The claimant examined himself before the Tribunal as PW1, whereas the owner and insurer of the Truck did not examine any witness in support of their case.

6. The Tribunal, on the evidence led by the claimant, held that claimant Mithun sustained injuries in the accident; the accident occurred due to rash and negligent driving of the driver of the Truck; and the insurer of the Truck was liable to pay compensation to the claimant.

7. The Tribunal, therefore, awarded a sum of Rs. 6,129/- towards medical expenses and Rs. 10,000/- towards pain and suffering and the loss of income. Thus, a total sum of Rs. 16,129/- was awarded as compensation to the claimant for the injuries suffered by him in the accident and the amount spent on treatment.

8. Mr. Z.U. Siddiquie, learned counsel for the appellant submitted that the Tribunal has erred in awarding low compensation of Rs. 16,129/- only as against the sum of Rs. 6,00,000/- claimed by the claimant.

9. Mr. T.A. Khan, learned counsel for first respondent New India Assurance Company Ltd., on the other hand, supported the award and submitted that the compensation of Rs. 16,129/- awarded by the

Tribunal cannot be termed as low so as to warrant enhancement in this appeal.

10. The findings that claimant Mithun sustained injuries in the accident; the accident occurred due to rash and negligent driving of the driver of the Truck; and that the Insurance Company was liable to pay compensation to the claimant, have now attained finality as none of the respondents have filed any appeal against the award.

11. Claimant Mithun was 22 years of age at the time of the accident in the year 2002. He used to earn Rs. 150/- per day as a labourer. From para 14 of the award, we gather that the claimant remained bed-ridden for sufficiently long period. True, the claimant claims to have spent an amount of Rs. 50,000/- on treatment, but the bills and vouchers produced before the Tribunal were to the extent of Rs. 6,129/- only. Though the claimant could not examine the doctor before the Tribunal to establish the fact of fracture of his left femur in the accident, some documents were filed along with the petition including a medical certificate dated 26.11.2002, whereby the petitioner was advised X-ray of left thigh and a X-ray report which discloses fracture of lower 2/3rd of his left femur.

12. Be that as it may, the fact remains that the claimant suffered multiple injuries in the accident. He could not attend to his duties for prolonged period. During this period, the claimant suffered physical pain and mental agony and so also loss of income. The amount of compensation of Rs. 16,129/-, when examined in the above context, is certainly on the lower side and deserves to be enhanced suitably.

13. Considering the age of the claimant; the number and nature of the injuries sustained by him in the accident; the amount spent on treatment; the period during which he could not attend to his duties resulting in monetary loss to him; and the physical pain and mental agony he suffered on account of the injuries sustained in the accident,

we are of the considered view that a lump sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) would be just and proper compensation to the claimant.

14. The appeal filed by the appellant under Section 173 of the Motor Vehicles Act, therefore, is allowed in part. The compensation of Rs. 16,129/- (Rupees Sixteen Thousand One Hundred and Twenty Nine only) awarded by the Tribunal is enhanced to Rs. 25,000/- (Rupees Twenty Five Thousand only). The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of the application. No order as to costs.

(M.M. Ghildiyal , J.)
06.03.2006

(Rajeev Gupta, C.J.)
06.03.2006

G